Public Prosecutor v Shari bin Mohd Shariff

HIGH COURT (SEREMBAN) — CRIMINAL APPEAL NO 42–89 OF 2002
LOW HOP BING J
10 JANUARY 2005

Criminal Procedure — Sentence — Adequacy of sentence — Sentence of 12 years imprisonment and six strokes of rotan on each of two charges of statutory rape — Plea of guilty by accused — Whether sentences manifestly inadequate — Penal Code s 376

Criminal Procedure — Sentence — Concurrent or consecutive — Sentence of 12 years imprisonment and six strokes of rotan on each of two charges of statutory rape — Both offences committed within two months at same place on same complainant under same section — Totality principle — Whether trial judge committed error of law in exercising discretion to order sentences to run concurrently instead of consecutively — Penal Code s 376

This was an appeal by the learned public prosecutor ('the appellant') against the decision of the learned sessions court judge ('the trial judge') imposing a sentence of 12 years imprisonment to run concurrently and six strokes of the rotan on each of two charges of statutory rape under s 376 of the Penal Code ('the Code') against the accused. The accused had pleaded guilty to both charges of raping his 12-year old daughter. The appellant argued that the sentence, having regard to the facts of the case, was manifestly inadequate. The appeal raised two issues for determination *inter alia*: (i) where an accused had pleaded guilty to and been convicted of two charges of statutory rape of his 12-year old daughter under s 376 of the Code, whether a sentence of 12 years imprisonment and six strokes of the rotan on each of the charges was manifestly inadequate; and (ii) where an accused had been sentenced to 12 years imprisonment on each of the two charges in the same proceeding and the dates of the commission of the offences were within two months, whether there was an error of law for the trial judge to order the sentences to run concurrently instead of consecutively.

Held, dismissing the appeal:

(1) Reverting to the sentences meted out by the trial judge herein, the trial judge, following *Jamaluddin bin Langkiau*, Kota Kinabalu Criminal Appeal No K–42–03 of 2002 (unreported), had seen the danger of imposing the maximum sentence of 20 years and decided in favour of taking into account the guilty plea in imposing the sentence of 12 years imprisonment (see para 15). The trial judge's judgment was well considered and he had taken into account all the relevant facts and circumstances of the case presented before him. Furthermore, he had indeed considered all the relevant established judicial principles and authorities in arriving at the sentences that were not manifestly inadequate (see para 16).

(2) The trial judge had correctly exercised his discretion by applying the totality principle and referring to all the established judicial principles. He had not occasioned any misdirection when exercising his discretion to order the sentences of 12 years imprisonment to run concurrently, as consecutive sentences would have offended the totality principle in that the total sentence to be served would extend to 24 years ie, four years in excess of the statutory maximum under s 376 of the Code, and as the two offences were committed within two months at the same place on the same complainant under the same section (see para 26).

[**Bahasa Malaysia summary**

Ini merupakan rayuan oleh pendakwa raya yang bijaksana ('perayu') terhadap keputusan hakim mahkamah sesyen yang bijaksana ('hakim bicara') yang telah mengenakan hukuman 12 tahun penjara berjalan serentak dan enam kali sebatan rotan ke atas setiap kedua-dua pertuduhan rogol statutori di bawah s376 Kanun Keseksaan ('Kanun tersebut') ke atas tertuduh. Tertuduh telah mengaku bersalah kepada kedua-dua tuduhan merogol anak perempuannya yang berumur 12 tahun. Perayu berhujah bahawa hukuman itu, setelah mengambil kira fakta-fakta kes, adalah jelas tidak mencukupi.

Rayuan ini menimbulkan dua isu untuk ditentukan *inter alia*: (i) di mana tertuduh telah mengaku bersalah dan telah disabitkan dua pertuduhan merogol statutori anak perempuannya yang berumur 12 tahun di bawah s 376 Kanun tersebut, sama ada hukuman 12 tahun penjara dan enam kali sebatan rotan terhadap setiap pertuduhan adalah jelas tidak mencukupi; dan (ii) di mana tertuduh telah dihukum 12 tahun penjara ke atas setiap kedua-dua pertuduhan di dalam prosiding yang sama dan tarikh melakukan kesalahan adalah dalam tempoh dua bulan, sama ada hakim bicara melakukan kesalahan undang-undang untuk memerintahkan kedua-dua hukuman dilaksanakan serentak atau berturutan.

Diputuskan, menolak rayuan:

(1) Melihat kembali kepada hukuman yang dikenakan oleh hakim bicara disini, hakim bicara, dengan mengikut *Jamaluddin bin Langkiau*, Kota Kinabalu Criminal Appeal No K–42–03 of 2002 (unreported), telah melihat bahaya mengenakan hukuman maksimum 20 tahun dan telah memutuskan dengan mengambil kira pengakuan bersalah di dalam mengenakan hukuman penjara 12 tahun (lihat perenggan 15). Keputusan hakim bicara dipertimbangkan dengan sebaiknya dan beliau telah mengambil kira semua fakta-fakta yang relevan dan keadaan-keadaan kes yang diajukan di hadapannya. Lebih-lebih lagi, beliau sebenarnya mengambil kira prinsip kehakiman yang sedia ada dan autoriti-autoriti di dalam memberikan hukuman yang jelasnya tidak terlalu ringan (lihat perenggan 16).

(2) Hakim bicara telah menggunakan budi bicaranya dengan sewajarnya dengan mengguna pakai prinsip keseluruhan dan merujuk kepada prinsip-prinsip kehakiman sedia ada. Beliau tidak melakukan apa-apa salah arahan apabila menggunakan budi bicaranya untuk mengarahkan hukuman 12 tahun penjara berjalan serentak, kerana hukuman berturutan akan melanggar prinsip keseluruhan kerana jumlah hukuman yang dijalankan akan meningkat kepada 24 tahun, iaitu empat tahun lebih daripada kadar maksimum yang dibenarkan oleh undang-undang dibawah s 376 Kanun tersebut, dan kerana kedua-dua kesalahan telah dilakukan dalam tempoh dua bulan di tempat yang sama dan ke atas pengadu yang sama di bawah seksyen yang sama (lihat perenggan 26).]

Notes

For cases on adequacy of sentence, see 5 *Mallal's Digest* (4th Ed, 2001 Reissue) paras 2850–2878.

For cases on concurrent or consecutive sentencing, see 5 *Mallal's Digest* (4th Ed, 2001 Reissue) paras 3312–3336.

Cases referred to

Abu Seman v PP [1982] 2 MLJ 338 (refd)
Amrita Lal Hazra v Emperor 42 Cal 957 (refd)
Bachik Abdul Rahman v PP [2004] 2 MLJ 534 (folld)
Chin Choy v Public Prosecutor [1955] MLJ 236 (refd)
Crowley and Garner v R 1991 55 A Crim R 201 (refd)
Gek Sing a/l Kaliappan v PP [1999] 6 MLJ 641 (refd)
Hashim Pawanchee & Anor v PP [1988] 2 MLJ 66 (refd)
Hj Johari Hj Abdul Karim v PP [1989] 2 MLJ 276 (refd)
Ismail bin Rasid v PP [1999] MLJU 446 (refd)
Jamaluddin bin Langkiau, Kota Kinabalu Criminal Appeal No K–42–03 of 2002 (unreported) (folld)
Jayaraman & Ors v PP [1979] 2 MLJ 88 (refd)
Maideen Pillai v PP [1996] 1 SLR 161 (refd)
Marimuthu Balakrisnan v PP [1974] 2 MLJ 145 (refd)
PP v Chot Saik Kam [1991] 1 MLJ 193 (refd)
PP v Ng Chong Wan [1988] 3 MLJ 114 (refd)
PP v Pretum Singh Lall Singh [2004] 6 MLJ 599 (refd)
PP v Teoh Heng Chye [1989] 3 MLJ 205 (refd)
PP v Wong Kok Sein & Ors [1988] 2 MLJ 436 (refd)
PP v Yap Huat Heng [1985] 2 MLJ 414 (refd)
PP v Yap Koon Mong [1999] 4 SLR 257 (refd)
R *v Faulkner* [1972] 56 Cr App R 594 (refd)
R *v Saleem* (1964) Crim LR 482 (refd)
R *v Sheatley* (1983) 5 Cr App R (S) 417 (refd)
R *v Skinner* [1986] 8 Cr App R (S) 166 (refd)
R *v Walsh* [1965] Crim LR 248 (refd)
Ramli Kechik v PP [1986] 2 MLJ 33 (refd)

Rex v Leo De Cruz [1935] MLJ 1 (refd)
Rex v Teo Cheng Lian [1949] MLJ 170 (refd)
SA Jamil bin Md Yusof v PP [2002] 6 MLJ 106 (refd)
Sau Soo Kim v PP [1975] 2 MLJ 134 (refd)

Legislation referred to

Criminal Procedure Code [Sing] s 18
Criminal Procedure Code ss 282(d), 292(i)
Penal Code ss 375(f), 376
Subordinate Courts Act 1948 s 102

Appeal from: Arrest Case No 62–14 of 2002 (Sessions Court, Kuala Pilah)

Roslan Abu Bakar (Deputy Public Prosecutor) for the prosecution/appellant.
Respondent in person.

Low Hop Bing J:

I APPEAL

[1] This is an appeal by the learned public prosecutor against the decision of the learned sessions court judge of Kuala Pilah ('the trial judge') who had on 15 April 2002 imposed a sentence of 12 years imprisonment from the date of arrest ie 10 August 2001, and six strokes of the rotan on each of the two charges against the accused. These charges read as follows:

Pertuduhan Pertama

Bahawa kamu pada 3 Jun 2001 antara jam 12tgh sehingga jam 7ptg di rumah No251, Blok L, Felda Setting 3, Air Hitam di dalam Daerah Jempol di Negeri Sembilan telah merogol ABC, K/P No XYZ. Oleh itu kamu telah melakukan satu kesalahan yang boleh dihukum di bawah s 376 Kanun Keseksaan.

Pertuduhan Kedua

Bahawa kamu pada 3 Ogos 2001 antara jam 5.30ptg sehingga jam 6.30pg di rumah No 251, Blok L, Felda Serting 3, Air Hitam di dalam Daerah Jempol di Negeri Sembilan telah merogol ABC, K/P No XYZ. Oleh itu kamu telah melakukan satu kesalahan yang boleh dihukum di bawah s 376 Kanun Keseksaan.

[My translation

First Charge

That you on 3 June 2001 between 12 noon and 7pm at house No 251, Block L, Felda Serting 3, Air Hitam in the district of Jempol in Negeri Sembilan did rape ABC, NRIC No XYZ and that you have thereby committed an offence punishable under s 376 of the Penal Code.

Second Charge

That you on 3 August 2001 between 5.30pm and 6.30am at house No. 251, Block L, Felda Serting 3, Air Hitam in the district of Jempol in the state of Negeri Sembilan did rape ABC, NRIC No XYZ and that you have thereby committed an offence punishable under s 376 of the Penal Code.]

[2] I have deleted the name and NRIC No of the complainant in order to protect her anonymity.

[3] These charges concern the offences of statutory rape where the consent of the complainant is irrelevant: s 375(f) of the Penal Code.

II FACTUAL BACKGROUND

[4] The accused is the father of the complainant who was at the time of the offence his 12-year-old daughter. He had pleaded guilty to both the charges.

[5] The facts of the case revealed that on 3 June 2001 between 12 noon and 7pm, the accused had sexual intercourse in the room of the complainant's sister at house No 251 Block L, Felda Setting 3, Air Hitam, Jempol. The accused had applied cooking oil at the complainant's private part and subsequently inserted his private part thereto, thereby resulting in the bleeding of the complainant's private part.

[6] The complainant had narrated the incident to her 13-year-old sister who in turn informed their mother. The accused had denied the episode when confronted by the complainant's mother ie the accused's wife.

[7] On 3 August 2001, the accused repeated the episode, but this time the venue was the hall of the house, after which the complainant had escaped to the house of her mother's adopted sister. The complainant lodged Air Hitam police report No 547/2001.

[8] On 11 August 2001, the complainant was examined at the Kuala Pilah Hospital and the result was: 'hymen not intact with minimal injuries at vulva area'.

[9] Upon the admission by the accused of these facts, his plea was accepted by the trial judge who recorded a conviction on each of the two charges against the accused. The aforesaid sentences were meted out by the trial judge who also ordered the imprisonment term to run concurrently.

III GROUNDS OF APPEAL

[10] In essence, En Roslan bin Hj Abu Bakar, the learned deputy public prosecutor, argued that the sentence imposed by the trial judge was manifestly inadequate, having regard to the facts of the case, especially where the complainant was the accused's 12-year-old daughter, in that the trial judge has failed to consider public interest, besides the disintegration of the family unit.

[11] He added that the accused had a previous conviction recorded on 21October 1996 for being in possession of stolen motorcycle and was sentenced to six months' imprisonment with effect from 21 September 1996.

[12] The accused appeared in person, both in the trial court and in this appeal. In his plea in mitigation, he prayed for the most lenient sentence, to run concurrently, as he was illiterate and a building contract worker having eight children and a non-working wife.

IV ISSUES FOR DETERMINATION

[13] This appeal raises two issues for determination viz:

(1) Where an accused has pleaded guilty to and been convicted of two charges of statutory rape on his 12-year-old daughter under s 376 of the Penal Code, are the sentences of 12 years imprisonment and six strokes of the rotan on each of the charges manifestly inadequate ('Issue 1')?

(2) Where an accused has been sentenced to 12 years imprisonment on each of the two charges in the same proceedings and the dates of the commission of the offences are within two months of each other, was there an error of law for the trial judge to order the sentences to run concurrently instead of consecutively ('Issue 2')?

V ARE THE SENTENCES MANIFESTLY ADEQUATE?

[14] In dealing with Issue 1, I shall make specific reference to three decisions of our High Court and one decision of the Singapore Court of Appeal, in which respective sentences have been handed down against the accused who had been convicted of statutory rape against their respective daughter under s 376 of the Penal Code. These cases are:

(1) In *Public Prosecutor v Pretum Singh Lall Singh* [2004] 6 MLJ 599, the father who was charged in the sessions court claimed trial to and was acquitted of raping his 14-year-old daughter. On appeal, RK Nathan J (as he then was) set aside the acquittal, recorded a conviction and sentenced the father to the maximum sentence of 20 years imprisonment and 15 strokes of the rotan.

(2) *Ismail bin Rasid v Pendakwa Raya* [1999] MLJU 446, where the father had pleaded guilty to two charges of raping his 14-year-old daughter and was sentenced to 12 years imprisonment and three strokes of the rotan on each of the charges, the imprisonment term was to run concurrently. The father appealed against the sentence. The question which arose for determination there was whether the appellate court ought to enhance the sentence instead. KN Segara J considered it as a

classic case where no discount should be given to the father and substituted it with five strokes of the rotan and a maximum sentence of 20 years imprisonment on each of the two charges; the sentences to run from the date of the arrest ie concurrently.

(3) However, in *Jamaluddin bin Langkiau*, Kota Kinabalu Criminal Appeal No K–42–03 of 2002 (unreported) Ian HC Chin J saw the danger in imposing the maximum sentence in cases here the accused has pleaded guilty because such a sentence would render it pointless for an accused person to plead guilty since he stands in the same position as an accused who does not plead guilty, and added that in fact, the accused is in a worse position because the one who does not plead guilty has a chance of being acquitted, which the accused who pleaded guilty would not have.

(4) In *Public Prosecutor v Yap Koon Mong* [1999] 4 SLR 257, the father pleaded guilty to, inter alia, three counts of raping his nine-year-old daughter. The High Court in Singapore sentenced the father to five years imprisonment on each count. Upon appeal by the prosecution, the Court of Appeal enhanced the five-year imprisonment to 15 years on each count.

[15] Reverting to the sentences meted out by the trial judge herein, it is to be noted that the trial judge has apparently followed the judgment of Ian HC Chin J in seeing the danger of imposing the maximum sentence of 20 years and decided in favour of taking into account the guilty plea in imposing the 12 years imprisonment.

[16] I have the opportunity of reading the well-considered judgment of the trial judge who has taken into account all the relevant facts and circumstances of the case presented before him. He has indeed considered all the relevant established judicial principles and the aforesaid authorities in arriving at the sentences which I hold are not manifestly inadequate.

VI STATUTORY PROVISIONS GOVERNING SENTENCES OF IMPRISONMENT

[17] In relation to Issue 2, it is necessary to examine the relevant statutory provisions governing sentences of imprisonment. In this regard, s 282(d) of our Criminal Procedure Code provides that such sentence shall take effect from the date on which it was passed unless the court passing the sentence otherwise directs. Under this provision, the sentencing court has a discretion to order concurrent or consecutive sentences.

[18] For brevity and convenience a reference hereinafter to a section is a reference to that section in our Criminal Procedure Code unless the context otherwise requires.

[19] Although s 292(i) provides that when eg a person who is undergoing a sentence of imprisonment is sentenced to imprisonment, such imprisonment shall commence either immediately or at the expiration of the imprisonment to which he has been previously sentenced, as the court awarding the sentence may direct. Section 292(i) gives the sentencing court a limited discretion to order the commencement of the sentence on such convicted person, either immediately or at the expiration of the imprisonment to which he has been previously sentenced. This provision applies only where a person is currently undergoing a sentence of imprisonment, in which case the subsequent sentence of imprisonment may run concurrently with the existing sentence of imprisonment or consecutively thereto. The facts of the instant appeal do not appear to fall within the ambit of s 292(i) as the accused is not currently undergoing a sentence of imprisonment.

[20] Section 102 of the Subordinate Courts Act 1948 confers upon the magistrate's court (but not the sessions court) the power to inflict concurrent or consecutive sentences in case of conviction for several offences at one trial, in the following words:

> 102 Sentence in case of conviction for several offencs at one trial
>
> When a person is convicted at one trial of any two or more distinct offences a magistrates' court may sentence him for those offences to the several punishments prescribed therefor which the court is competent to inflict, the punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the court may direct, or to run concurrently if the court shall so direct, but it shall not be necessary for the court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of one single offence, to send the offender for trial before a higher court:
>
> Provided that:
>
> (a) in no case shall the person be sentenced to periods of imprisonment amounting in the aggregate to more than twenty years;
>
> (b) the aggregate punishment shall not exceed twice the amount of punishment which the court in the exercise of its ordinary jurisdiction is competent to inflict; and
>
> (c) when imprisonment is directed in default of payment of a fine or of costs or compensation ordered under the authority of any law for the time being in force, the imprisonment shall be consecutive to any other term or terms of imprisonment so directed and to any sentence of imprisonment otherwise imposed.

[21] Where there are two separate proceedings, s 102 has no application as it refers only to 'at one trial': see *SA Jamil bin Md Yusof v Public Prosecutor* [2002] 6 MLJ 106 per Syed Ahmad Helmy JC (now J).

[22] Section 18 of the Singapore Criminal Procedure Code (Cap 68) contains specific provisions dealing with the inflicting of consecutive sentences in certain cases in the following words:

> Where at one trial a person is convicted and sentenced to imprisonment for at least three distinct offences, the court before which he is convicted shall order that the sentences for at least two of those offences shall run consecutively.

[23] In Malaysia, we have no such provision which in any event would only apply where at one trial a person has been convicted and sentenced to imprisonment for at least three distinct offences.

VII CONCURRENT OR CONSECUTIVE?

[24] The principles governing the imposition of concurrent or consecutive sentences have been succinctly stated in *Bachik Abdul Rahman v Public Prosecutor* [2004] 2 MLJ 534 at p 539 by Augustine Paul JCA who delivered the judgment of the Court of Appeal and may be enumerated as follows:

(1) In deciding whether the terms of imprisonment should be concurrent or consecutive, the court should be guided by the one transaction rule and the totality principle;

(2) Pursuant to the one transaction rule, where two or more offences are committed in the course of a single transaction all sentences in respect of these offences should be concurrent rather than consecutive: *R v Saleem* [1964] Crim LR 482; *R v Walsh* [1965] Crim LR 248; *Abu Seman v Public Prosecutor* [1982] 2 MLJ 338 at p 343 Chong Siew Fai J (later CJ (Sabah & Sarawak); *Public Prosecutor v Yap Huat Heng* [1985] 2 MLJ 414, *Abu Seman v Public Prosecutor*,; *Hashim bin Pawanchee & Anor v Public Prosecutor* [1988] 2 MLJ 66; *Haji Johari bin Haji Abdul Karim v Public Prosecutor* [1989] 2 MLJ 276; *Public Prosecutor v Wong Kok Sein & Ors* [1988] 2 MLJ 436; *Sau Soo Kim v Public Prosecutor*,; and *Public Prosecutor v Ng Chong Wan* [1988] 3 MLJ 114, in *Gek Sing a/l Kaliappan v Public Prosecutor* [1999] 6 MLJ 641 per Vincent Ng J.

(3) For there to be one transaction four elements must be present, that is to say, proximity of time, proximity of place, continuity of action and continuity of purpose or design: *Jayaraman & Ors v Public Prosecutor* [1979] 2 MLJ 88; *Amrita Lai Hazra v Emperor* 42 Cal 957; *Chin Choy v Public Prosecutor* [1955] MLJ 236; and *SA Jamil bin Md Yusof v Public Prosecutor* [2002] 6 MLJ 106;

(4) The one transaction rule is, however, not absolute, as there are situations where consecutive sentences are necessary to discourage the type of criminal conduct being punished: *R v Sheatley* [1983] 5 Cr App R 417 and *R v Skinner* [1966] 8 Cr App R 166. The applicability of the exception is said to depend on the facts of the case and the circumstances of the offence;

(5) A cumulative sentence may offend the totality principle if the aggregate sentence is substantially above the normal level of sentences for the most serious of the individual offences involved, or if its effect is to impose on the offender 'a crushing sentence' not in keeping with his records and prospects: DA Thomas in *Principles of Sentencing* (2nd Ed) pp 57–58; *Wong Kai Chuen Philip v Public Prosecutor*, and *Kanagasuntharam*, and *Maideen Pillai v Public Prosecutor* [l996] 1 SLR 161;

(6) Sentences must have regard to the total length of sentence passed, particularly where consecutive sentences have been imposed, to ensure that the sentence properly reflects the overall seriousness of the behaviour: *Emmins on Sentencing* (2nd Ed) p 151;

(7) There will be cases properly described as crushing the hope in the offender of reformation and a return to a desirable life but in which the offender has, by his criminal acts, forfeited any right to have his sentence reduced on that account: *Crowley and Garner v R* [1991] 55 A Crim R 201;

(8) A richly deserved sentence, not manifestly excessive, should not be disturbed just because the person upon whom the sentence is imposed may feel crushed by it : per O'Bryan J in *Crowley and Garner v R*, at p 301;

To the above principles, the following may be added:

(9) The question whether the sentences should run consecutively or concurrently must depend upon the particular circumstances of the case: *Sou Soo Kim v Public Prosecutor* [1975] 2 MLJ 134, per Lee Hun Hoe CJ (Borneo) (as he then was) whose judgment was read by Suffian LP (as he then was);

(10) The totality principle requires the court to consider whether the aggregate is just and appropriate and to ensure that the sentence is not excessive: *R v Faulkner* (1972) 56 Cr App R 594; *Public Prosecutor v Teoh Heng Chye* [1989] 3 MLJ 205; *Public Prosecutor v Chot Saik Kam* [1991] 1 MLJ 193; *Marimuthu Balakrisnan v Public Prosecutor* [1974] 2 MLJ 145.

[25] Reverting to the facts before the trial judge and now before me in this appeal, I am of the view that the trial judge has correctly exercised his discretion by applying the totality principle and also by referring to all the established judicial principles. He has taken into account all the relevant facts and circumstances and has correctly analysed the one transaction principle and the totality principle, after which he has applied the totality principle. In my view he has not occasioned any misdirection in the exercise of his discretion when he ordered the sentences of 12 years imprisonment to run concurrently, as consecutive sentences would have offended the totality principle in that

the total sentence to be served would extend to 24 years ie four years in excess of the statutory maximum under s 376 of the Penal Code, as the two offences were committed within two months at the same place on the same complainant under the same section.

VIII FUNCTIONS OF APPELLATE COURT

[26] It is trite law that an appellate court will not interfere with the decision of the court below on the question of sentence unless for example:

(1) the trial judge has proceeded on wrong principles: *Rex v Leo De Cruz* [1935] MLJ 1 (CCA) per Huggard CJ;

(2) there is manifest error, either in law or in considering the facts and circumstances, or an omission to consider such facts an circumstances: *Rex v Teo Cheng Lian* [1949] MLJ 170 per Gordon-Smith J; or

(3) an essential principle of justice has been infringed in such circumstances as to occasion a substantial miscarriage of justice: per Mohamed Azmi SCJ (as he then was) in *Ramli Kechik v Public Prosecutor* [1986] 2 MLJ 33 (SC).

IX CONCLUSION

[27] As the trial judge has correctly exercised his discretion in imposing the sentence, I can find no merit in this appeal which I hereby dismiss and the sentence imposed by the trial judge is affirmed.

Appeal dismissed with costs.

Reported by Mohd Nizam Hamdan